

DECISION



24181
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-208747

DATE: January 31, 1983

MATTER OF: Larry Napoleon Cooper

DIGEST:

1. Where agency, during numerous discussions with offeror, adequately advised him of informational deficiencies in his proposal, offeror's failure to supply requested information in revised response resulted in proper determination that offeror's response was unacceptable without affording additional opportunities to submit required information.
2. Protester did not receive first two amendments of three in a timely manner. Protest against agency's denial of prospective offeror's request for extension of closing date to compensate for late receipt of amendments is denied where there was no conscious or deliberate attempt to preclude protester from competing and adequate competition was obtained.

Request for proposals (RFP) No. DLA600-82-R-0461 was issued by the Defense Fuel Supply Center (DFSC), Defense Logistics Agency (DLA), for the procurement of jet fuel and marine fuel for over 300 military activities. Mr. Larry Napoleon Cooper (Cooper) protests the decision of DLA to exclude his proposal from the competitive range due to a determination that it did not comply with the requirements contained in the solicitation. We deny the protest.

The solicitation required contractors to supply information concerning bulk fuel procurements. Specifically, the RFP required that offerors provide price, quantity and transportation information as well as evidence showing proof of oil supply commitments and access to refineries.

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The contracting officer, in his report to our Office in response to the protest, states that when Cooper's offer initially was reviewed, it was thought to be unacceptable because it did not conform to the requirements contained in the solicitation. Cooper's offer did not provide the above-required information and it proposed to supply products other than the requested fuel. Further, it covered a 5-year period instead of the 1-year period called for in the RFP.

Based upon the advice of DFSC Office of Counsel, however, negotiations were held with Cooper. Prior to negotiations, Cooper was notified that he would be asked to provide DFSC with the exact quantities of jet fuel and marine fuel he was offering to supply, the individual prices of the fuel for items offered on a destination or an origin basis, the modes of transportation for delivery of the fuel to different locations and evidence of sufficient supply commitments.

The contracting officer reports that Cooper failed to provide this information. Subsequently, a meeting was held in which Cooper again was asked to provide the above-requested information. Cooper, however, stated that he stood by his original offer.

Cooper maintains that had negotiations continued and had he been awarded the contract, he would have supplied DFSC with the information required by the solicitation. Further, Cooper contends that DFSC's determination not to extend the closing date for best and final offers after receiving notice that Cooper had not received two amendments to the RFP until shortly before best and final offers were due prevented him from adequately revising his offer.

This Office has held that where an agency has adequately advised an offeror of informational deficiencies in required documentation, the offeror's failure to satisfy the informational requirement may properly result in a determination of unacceptability. SMS Data Products, B-197776, February 18, 1981, 81-1 CPD 103. Additionally, once an offeror has been given an opportunity to clarify aspects of its proposal and the offeror's responses lead to a discovery of technical unacceptability, the agency has no obligation to conduct further discussions and may drop the proposal from competitive range. Lanier Business Products, Inc., B-205934, June 30, 1982, 82-1 CPD 635.

In this case, the record clearly shows that DFSC had several discussions with Cooper in which he was advised that his proposal did not conform with the requirements contained

in the solicitation. The contracting officer's supplemental report to our Office pointed out that notwithstanding numerous requests for the needed information, Cooper provided no evidence of supply commitments, plans to meet the delivery schedule, or plans to obtain bank financing. Further, the report explained that DFSC never was able to evaluate Cooper's offer because Cooper never clearly stated his price terms, the quantities, products and delivery locations he was offering.

Moreover, Cooper, himself, recognized that his offer did not conform with the requirements contained in the RFP. In his proposal, Cooper stated that to the extent his offer was considered unresponsive, it was his intent that his offer represent a "related voluntarily submitted unsolicited proposal." Thus, in light of these factors, we find that DFSC's rejection of Cooper's proposal as unacceptable because it failed to conform with the requirements contained in the solicitation was proper.

Further, Cooper's claim that he should have been afforded the opportunity for additional discussions is without merit. The record indicates that DFSC had several meaningful discussions with Cooper in which he was advised that he must clarify his pricing terms and supply the above-requested information. Thus, Cooper was given an adequate opportunity to revise his proposal. Consequently, DFSC was under no obligation to conduct further discussions with him. Lanier Business Products, Inc., supra.

Cooper also protests the agency's decision not to extend the closing date for best and final offers after receiving notice that Cooper did not receive two amendments to the RFP until shortly before the offers were due. Cooper asserts that although he did receive amendment 0003 to the RFP, he did not receive copies of amendments 0001 and 0002. DFSC maintains that since Cooper received amendment 0003, he should have been on notice that he was missing amendments 0001 and 0002.

While it is unfortunate that Cooper did not receive these amendments in a timely manner, this Office has ruled that refusal to extend the closing date to compensate for late receipt of amendments is unobjectionable where there was no conscious or deliberate attempt by the agency to preclude the offeror from competing and adequate competition was obtained. CompuServe, B-192905, January 30, 1979, 79-1 CPD 63.

We see nothing in the record to indicate, nor does Cooper allege, that there was deliberate attempt to prevent him from submitting a proposal. Further, since 65 offerors did submit proposals, adequate competition was obtained. Consequently, DFSC's denial of Cooper's request for an extension of the closing date was not improper.

Finally, in view of the above, we find it unnecessary to discuss the other issues raised by Cooper.

The protest is denied.

Milton J. Fowler
for Comptroller General
of the United States